

APPLICANTS:
Jeffrey & Leslie Lynn

REQUEST: A variance to permit a dwelling within the required front yard setback in the Agricultural District

HEARING DATE: September 11, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5559

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Jeffrey N. Lynn

CO-APPLICANT: Leslie C. Lynn

LOCATION: 5500 New Park Road – Island Branch Farm, White Hall
Tax Map: 2 / Grid: 4B / Parcel: 16
Fourth (4th) Election District

ZONING: AG / Agricultural

REQUEST: A variance, pursuant to Section 267-34(C), Table II, of the Harford County Code, to permit a dwelling to encroach into the 70 front yard setback (60 foot setback proposed from the center of the road) in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Leslie C. Lynn, Co-Applicant, first testified. Mrs. Lynn stated that she and her husband purchased the improved, 101 acre Island Branch Farm approximately 2 years ago. At the time of its purchase, the Applicants understood that the existing farm house was in need of renovation. Accordingly, in January 2005 the Applicants obtained a permit from Harford County for their planned renovation. They were basically modernizing and enlarging the house to two stories.

Upon beginning the renovation process, the Applicants quickly discovered structural damage to the home, specifically a cracked foundation wall. The Applicants and their contractor determined it was necessary to demolish and rebuild the house due to its deteriorated condition.

Accordingly, the existing house was completely torn down with the construction of the new home started on the existing foundation.

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Not being able to complete the home within the time limits of the building permit, the Applicants requested an extension of the building permit in June 2006. At that time, and for the first time, the Applicants were notified that the permit they had been granted for renovation was no longer applicable and they, in fact, needed a new permit for the reconstruction of the home. This news came apparently after they had already been given electrical and plumbing inspections.

Finding themselves squarely up against the wall of unintended consequences, the Applicants then learned that since the original home was located in a non-conforming location on their property, and a completely new home was being built on the existing foundation, the new home would in fact not be allowed without a front yard variance. The old home was permitted as it was non-conforming but, since the old home had been torn down and a new home was being built, the non-conforming status was lost and a variance was necessary if the house was to be allowed to be located as planned. Of course, this news came after much of the new home had already been built.

The Applicants have also been informed that no more inspections would be undertaken until the variance was requested and granted. This means, of course, that a final use and occupancy permit cannot be obtained.

Finding themselves in a position clearly not of their own making, or even reasonably foreseen, the Applicants now request a variance to allow the new home to be built (to, in fact, remain) upon the old foundation, which is within the applicable front yard setback of the property.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune is familiar with the property. He and the Department feel that the property is unique. The existing dwelling was non-conforming, located 10 feet within the setback. The present construction does not encroach into the setback any more than did the original house.

Given the fact that the foundation of the original structure remains on the property, at the proposed location, Mr. McClune feels that the present location is the most appropriate for the new house. Mr. McClune and the Staff Report also make clear that other dwellings located on New Park Road are also non-conforming as to the front yard setback, and there is no uniform street scape in the area. The requested variance will not adversely impact the neighbors or neighborhood.

There was no testimony or evidence given in opposition.

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APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants find themselves in a position not of their own making, one which has had serious and expensive consequences. Two years ago the Applicants purchased the subject property, an improved, 101 acre farm. The existing home was in bad condition and needed to be renovated. During the course of renovations structural deficiencies were found which necessitated the removal of the home (not the foundation), and the construction of a new home on the old foundation.

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The Applicants, having the permit for the renovation, continued, obviously unaware that they were running afoul of a rather obscure section of the Zoning Code, which is that an existing non-conforming dwelling can be renovated but by not more than fifty percent (50%) of its replacement value. If it is renovated to more than fifty percent (50%) of its replacement value it is considered a new structure, and loses its non-conforming use status. Consequently, and possibly obscurely to those not intimately familiar with the Zoning Code, such a building would then require a variance if built, even if simply built on an existing foundation, within the existing setback.

The Applicants present a sympathetic and understandable situation, and their testimony was not contradicted by the Department of Planning and Zoning.

It is accordingly found that the Applicants' property is unique and as a result they would suffer a practical difficulty if they were not able to build a replacement home on the existing foundation, the location of the original home. The relief requested is the minimum necessary to afford the Applicants the relief they seek. The new construction does not encroach any closer to New Park Road than did the old home. There is no adverse impact on any adjoining neighbor or on the neighborhood. In fact, a review of photographs in the file of the new house amply demonstrate that the house is a substantial and attractive structure which will no doubt be a benefit to the neighborhood.

CONCLUSION:

For the above reasons, it is recommended the requested variance be granted, subject to the following conditions:

1. The Applicants shall amend the existing permit and obtain any necessary inspections.
2. The Applicants shall provide landscaping between the front of the house and the road. A landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval.

Date: October 6, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 3, 2006.